

### **REMARKS**

Claims 1-40 are pending in the instant application. Claims 1-26, 39 and 40 are presently under examination. Previously withdrawn claims 27-38 have been cancelled herein without prejudice. Applicant reserves the right to pursue the cancelled claims in one or more continuation or divisional patent applications. Claims 1, 12-16, and 25-26 have been amended. Claims 41-49 have been added. The amendments are supported throughout the specification, for example, support for the use of an AOX1 promoter is supported on page 22, line 4; support for agitation speed of 400 RPM during induction is provided in the abstract; support for step for inclusion of phenylmethanesulfonyl fluoride is provided on page 54, lines 20-22; support for ramping down the temperature to the induction temperature within the first four hours in claim 41 is provided on page 56, lines 1-2; support for specific minimum induction times at temperatures of 17.5° C or below in claims 44 to 49 is provided in Figures 15B and 15C. The remaining amendments are to correct informalities as noted below and are supported within the claims themselves.

#### *Interview summary*

Applicant thanks the Examiner for her time and courtesy during the telephonic interview on January 28, 2010. No agreement was reached. However, the amendments and remarks presented herein reflect the discussion during the interview.

#### *Petition*

Applicant thanks the Examiner for acknowledging that the petition filed under 37 CFR §1.137(b) filed 7/23/09 has been granted.

*Claim objections*

The Office Action objected to claims 1, 12-14, 25 and 26, noting a number of claim informalities. Applicant thanks the Examiner for the careful reading of the claims and has made the suggested amendments to claims 1, 25, and 26 as indicated above. The objections have been overcome. Applicant notes that the amendments are made purely to correct informalities and that the amendments do not alter the scope of the claims.

*Rejection of claims under 35 U.S.C. §112, first paragraph*

The Office Action has rejected claims 1-26, 39 and 40 under 35 U.S.C. §112, ¶1 for allegedly not being enabled by the specification. Specifically, the Office Action asserts that the only promoter supported by the specification is the AOX1 promoter.

Without agreeing with the rejection and purely to progress the prosecution of the application, as discussed during the interview, Applicant has amended claim 1 to recite that the immunotoxin is expressed under the control of the AOX1 promoter. The rejection is traversed.

*Rejection of claims under 35 U.S.C. §103(a)*

The Office Action has rejected claims 1, 3, 5-10, 12, 13, 15-20, 22-25, 39 and 40 under 35 U.S.C. 103(a) for allegedly being unpatentable over Madsen et al (US 6,723,536) in view of Neville et al (WO 01/87982).

The Office Action has further rejected claims 2, 4, 11, 14, 21 and 26 under 35 U.S.C. 103(a) as allegedly being unpatentable over Madsen et al (US 6,723,536) in view of Neville et al (WO 01/87982) as applied to claims 1, 3, 5-10, 12, 13, 15-20, 22-25, 39 and 40 above, and further in view of Magota et al (6,171,828) and McGrew et al (Gene, 1997, Vol 187(2), pages 193-200) and Chang et al (US 6,992,172).

For efficiency, the rejections will be addressed simultaneously.

Applicant respectfully disagrees with the rejections. However, Applicant has amended claims 1, 25, and 26 to recite that the expression of the immunotoxin is under the control of the AOX1 promoter. As noted during the telephonic interview, Madsen neither teaches nor suggests the use of the AOX1 promoter. Applicant submits that Madsen provides no teachings regarding promoters whatsoever. Further, none of Magota, McGrew, and Chang teach the AOX1 promoter.

To further distinguish the instantly claimed invention from the cited art, Applicant has added dependent claims 41 to 49.

Claims 41 to 44 are concerned with the rapid rate at which the temperature is decreased after initiation of methanol induction, specifically within four hours. This is clearly distinct from the cited art. As noted in the Office Action, "Madsen teaches methanol induction occurs for 83 hours at 26°C" (top of page 8 of the Office Action). In view of this teaching, it cannot be suggested or obvious to decrease the temperature to the induction temperature recited in the claims, 17.5°C, 16.5°C, or 15°C, so quickly after induction as recited in claims 41 to 44. None of the other cited references can overcome this deficiency. Therefore, the new claims are not obvious in view of the cited art.

Further, claims 44 to 49 recite extended periods of induction at temperatures of 17.5°C, 16.5°C, or 15°C for extended times, e.g., 44 hours and 67 hours. There can be no teaching or suggestion based on Madsen to maintain the culture at such a low temperature for such an extended time. Moreover, as no methanol is added to the culture of Madsen after the temperature has dropped below 20°C, it is uncertain if sufficient methanol would be present to induce expression at such extended time points after the methanol loop was shut off.

In view of the above amendment and arguments, withdrawal of the rejections is respectfully requested.

### **FEE AUTHORIZATION**

It is believed that there is no fee due with this response. However, if a fee is due with this paper or any other paper filed by this firm in relation to this application, the Commissioner is hereby authorized to charge Deposit Account No. 04-1105 referencing Docket No. 84120(47992). Refund of any overpayments is respectfully requested.

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Respectfully submitted,

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